

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION**

TODD UPSHAW,

Plaintiff,

v.

Warden MCLAUGHLIN, et al.,

Defendants.

CIVIL ACTION NO. 5:15-CV-395 (MTT)

ORDER

Before the Court is the Recommendation of Magistrate Judge Stephen Hyles on a motion for summary judgment (Doc. 55) brought by all of the remaining Defendants in this case—Defendants Bobbitt, Bostick, Colbert, Demundo, Hall, Jones, Lindsey, McIntyre, McLaughlin, and Wilkerson (also identified in some documents as “Kendrick Wilkinson”). Doc. 74. The Magistrate Judge recommends granting the motion because (1) the Eleventh Amendment bars the Plaintiff’s official capacity claims; (2) the Prison Litigation Reform Act bars the Plaintiff’s claims for compensatory and punitive damages; (3) the Plaintiff’s First Amendment claims are all barred, either by the Plaintiff’s failure to exhaust or on the merits; and (4) the Plaintiff’s Due Process Clause claims must all fail because the Plaintiff was not subjected to atypical and significant hardship.¹ *Id.* The Plaintiff has not objected to the Recommendation.

¹ The Recommendation also concludes that the Due Process claims should fail because the Plaintiff was afforded sufficient process. *Id.* at 15-17. Indeed, the Defendants appear to thoroughly document sufficient process. See Doc. 55-9 at 11-45 (chronicling the Plaintiff’s initial segregation hearing and multiple subsequent 90-day reviews). But the Court notes that the Plaintiff vigorously disputes parts of the Defendants’ account of the process the Plaintiff was actually provided. Doc. 67 at 4-5; see *id.* at 5 (“But the most startling effect of defendants ‘Exhibit H’ [documenting the Plaintiff’s initial 96 hour segregation hearing], is that it is fictitious, a fraud and a fake document.”). Because the lack of atypical

The Court has reviewed the Recommendation, and the Court accepts and adopts the findings, conclusions, and recommendations of the Magistrate Judge. The Recommendation is **ADOPTED as modified** and made the order of this Court. Accordingly, the Defendants' motion for summary judgment (Doc. 55) is **GRANTED**.

SO ORDERED, this 23rd day of February, 2017.

S/ Marc T. Treadwell
MARC T. TREADWELL, JUDGE
UNITED STATES DISTRICT COURT

and significant hardship, standing alone, justifies summary judgment on the Plaintiff's Due Process claims, the Court limits its ruling to that rationale.